

**ANNUAL REPORT  
to the Commissioner  
Department of Environmental Protection  
July 1, 1991 -- June 30, 1992**

**I. Introduction**

The Board of Underground Tank Installers was established in 1985 by 32 MRSA Chapter 104-A and its authorities expanded and modified by subsequent amendments in 1987, 1989, 1990, and 1992. According to the statute, the purpose of the Board is as follows:

"In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to assure the highest degree of professional conduct on the part of underground oil and underground hazardous substance storage tank installers and to assure the availability of underground oil and underground hazardous substance storage tank installations of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil and underground hazardous substance storage tank installation services."

Thus, the Board has two major responsibilities: (1) certifying underground tank installers and underground gasoline tank removers, and (2) taking disciplinary actions against installers and removers who violate its enabling statutes and rules. By law, the Board is also charged with submitting an annual report to the Commissioner of the Department of Environmental Protection (32 MRSA Section 10004(6)). This report is designed to fulfill that mandate for FY 91/92. It covers the following major subject areas:

- Membership and Staffing;
- New Certifications and Testing;
- Recertification and Continuing Education;
- Processing of Complaints;
- Rulemaking and Program Development;
- Other Issues; and
- Financial Statement

## II. Membership and Staffing

Members of the Board are as follows:

- Leslie Smith (Me. Chamber of Commerce) - Second term expires 12/31/92.
- Steven Jacobson (Me. Oil and Solid Fuel Board) - Second term expires 12/31/93.
- Rance Knowles (Maine Fire Chief Association) - Term expires 12/31/94.
- Homer Ward, Jr. (Public Member) - Term expires 12/31/92.
- Alan Prysunka (DEP) - Term expires 12/31/93.
- Richard Tuttle (Me. Oil Dealer's Assoc.) - Second term expires 12/31/94.
- Elmer F. Walker, chair (certified installer) - Second term expires 12/31/92.

Homer Ward is a new member this year. He was appointed January 13, 1992 to fulfill the unexpired term of James Libby, who resigned from the Board. Mr. Ward represents the public pursuant to the Board's enabling legislation. Richard Tuttle was reappointed a second full term. Ted Walker was elected chairman in January 1992. James Hynson and Theresa Scott continued to provide staffing to the Board. Support from the office of the Attorney General was provided by Dennis Harnish.

## III. New Certifications and Testing

This section includes discussions on (A) number of installers certified, (B) written exams, (C) on-site exams, (D) upgrades, and (E) apprenticeships.

### **A. Number of Installers Certified**

The number of certified installers is 213, compared to 239 that were certified at the end of FY 90/91. At present, this includes 209 who hold Class 2 Oil Tank Installer Certificates, and four (4) who hold a Class 3 Oil Tank Installer. During the year, eight (8) new installers became certified while twenty-six (26) elected not to apply for recertification once their old certificates expired. Eight (8) others have reapplied and are awaiting Board decisions on renewing their certificates, since they failed to meet the Board's continuing education requirements.

There are no underground gasoline tank removers or underground hazardous substance tank installers certified by the Board. As of the end of this year, the Board has yet to receive any applications for underground hazardous substance tank installer certificates in the five (5) years the program has been effective. In the event a facility owner would wish to install or replace an underground hazardous substance tank, a legally qualified person would not be available. We suggest the DEP consider seeking amendment of its statutes and/or rules to allow such an installation or replacement to proceed under the supervision of a professional engineer and underground oil tank installer while the Board would seek abolishment of this distinctly undemanded program. The Board processed four applications and initial examinations for underground gasoline tank remover. One fire official and one private applicant passed the remover's exam, while two (2) private applicants failed the remover's exam.

### **B. Written Exams**

Considerable effort was spent in FY 91/92 in updating written examinations, principally the initial oil tank installer examination, to incorporate regulatory and technical changes. Specifically, September 16, 1991 amendment of the Department of Environmental Protection's (DEP) underground tank regulations (06-096 CMR c. 691) necessitated considerable revision to the initial oil tank installer examination. Updated versions of recommended practices published by the American Petroleum Institute, National Fire Protection Association, Petroleum Equipment Institute, and Steel Tank Institute were also incorporated into our tests and study material.

Severe difficulty continued in the attempt to develop a study packet and examinations for the Class 1 (heavy oil) final exam. The Board and staff were unable to uncover sufficient written information on this subject available to applicants at reasonable cost from which to base an examination in spite of significant efforts by Board staff, DEP engineers and a volunteer committee of currently certified Class 1 installers. Because of this difficulty and because demand for the Class 1 certificate was not high, the Legislature amended our enabling statute (P.L. 1992, c. 817, Secs. 1-3) to repeal the Class 1 certificate and to grant the Class 2 installers the privilege of installing heavy oil tanks and facilities.

This same legislation granted the Board authority to administer the underground gasoline tank remover examination to fire officials, in cooperation with DEP and pursuant to P.L. 1990, c. 865.

We offered three (3) written examinations during FY 91/92: December 18, 1991, January 29, 1992, and June 3, 1992. In all cases, the Board offered the initial oil tank installer examination, the final examinations for Classes 2 and 3 underground oil tank installer certification, the underground gasoline tank remover examination, and the underground hazardous substance tank installer examination. Results of those examinations are provided in Table 1. A total of 32 applicants took the exams, including 17 initial oil tank installer exams, six (6) Class 2 oil tank installer final exams, five (5) Class 3 oil tank installer final exams, and four (4) gasoline tank remover exams. Of these 21 passed while eleven (11) failed.

<b>Exam</b>	18 Dec. 91			29 Jan. 92			3 Jun. 92			<b>Summary</b>		
	<b>Pass</b>	<b>Fail</b>	<b>Total</b>	<b>Pass</b>	<b>Fail</b>	<b>Total</b>	<b>Pass</b>	<b>Fail</b>	<b>Total</b>	<b>Pass</b>	<b>Fail</b>	<b>Total</b>
Initial Oil Tank Installer	2	4	6	7	0	7	2	2	4	11	6	17
Class 1 Final	0	0	0	0	0	0	0	0	0	0	0	0
Class 2 Final	3	1	4	1	0	1	1	0	1	5	1	6
Class 3 Final	0	1	1	1	1	2	2	0	2	3	2	5
Gasoline Tank Remover	1	0	1	1	2	3	0	0	0	2	2	4
Haz. Sub. Tank Installer	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>6</b>	<b>6</b>	<b>12</b>	<b>10</b>	<b>3</b>	<b>13</b>	<b>5</b>	<b>2</b>	<b>7</b>	<b>21</b>	<b>11</b>	<b>32</b>

Table 1. Results of written examinations given by the Board of Underground Storage Tank Installers FY 91/92.

### C. On-Site Exams

1990 amendments to the Board's enabling legislation and rules eliminated the need to conduct on-site examinations for applicants for oil tank installer certificates. While on-site exams remain required for underground hazardous substance tank installers and underground gasoline tank removers, no applications for underground hazardous substance tank installer certificates were received in FY 91/92. One request was received to conduct an underground gasoline tank remover on-site examination. However, the applicant did not have a site that conformed to the Board's rules. Therefore, no on-site exams were conducted.

### D. Upgrades

1990 amendments to the Board's enabling legislation and rules allowed the Board to upgrade grandfathered Class 2 installers to Class 1 installers if applicants demonstrated sufficient training and experience to the Board. The Board conducted a self-assessment of the upgrades processed in FY 90/91 and found it had problems administering this section of the statute consistently. Possibly due to the regulated community anticipating elimination of the Class 1 certificate, only two (2) applications to upgrade to Class 1 were received or processed in FY 91/92.

### E. Apprenticeships

By virtue of passing the initial oil tank installer examination, eleven (11) applicants qualified as oil tank installer apprentices this year, in addition to the forty (40) which qualified in previous years. Eleven (11) of those subsequently completed the number of installations required to make them eligible to take the final exam. Of those, eight (8) passed the final exam. All but two (2) apprentices elected to renew their apprentice certificates or have certificates which are current, and thus forty-one (41) underground oil tank installer apprentices currently exist in Maine.

## F. Variances

1990 amendments to the Board's enabling legislation instituted a variance process for individuals to obtain variances for the apprenticeship portion of the certification process (32 MRSA Sec. 10010.3-A.D; 06-481 CMR c. 3 Sec. 4.D). During FY 91/92, the Board processed three applications for variances and granted them all for Class 2 certificates. One of the applicants since sat for the Class 2 final examination, passed it, and has been awarded a Class 2 oil tank installer certificate.

## IV. Recertification and Continuing Education

Of the 239 installers who were certified to install underground tanks at the end of FY 90/91, 210 of them held certificates which expired in FY 91/92. Of those, 173 applied and were granted certificates, while 30 did not reapply. Six (6) individuals applied but had not met the Board's continuing education requirement, and thus disciplinary action is ensuing. One (1) installer applied for reinstatement after failing to submit applications for renewal at the end of FY 90/91, and the Board subsequently allowed him to become recertified upon making up needed continuing education and volunteering civil penalties.

Continuing education opportunities accredited by the Board in FY 91/92 are listed in Table 2. In addition, educational opportunities approved in FY 90/91 continued to be available included a 40 hour OSHA course (accredited for 8 credit hours) sponsored by PETCON, Inc.

## V. Processing of Complaints

Disciplinary actions involving sixteen (16) investigations and thirty-one (31) alleged violations were processed and resolved in FY 91/92, including four (4) held over from 1990/91. A summary of the Board's actions in these matters is presented in Appendix A.

Twenty-two (22) complaints involving forty-two (42) alleged violations were received in FY 91/92. Investigations which remain unresolved at the end of the year are listed in Table 3.

Figure 1 shows the number of investigations conducted by the Board and its staff since promulgation of the Board's rules in August, 1988. This graph indicates a significant increasing trend in Board enforcement efforts.

The Maine Supreme Court, sitting as the Law Court, affirmed the Board's May 18, 1990 decision and the Superior Court of Penobscot County's affirmation to refuse to renew a certificate of an installer who violated 38 MRSA Sec. 543.

Sponsor	Subject	Date Approved	Credit Hours	Number of Sessions
ME Oil Dealers	UST Regulations	8/9/91	4	3
ME DEP	UST Regulations	9/20/91	1	1
Adams & Fogg	UST Equipment	1/17/92	3	3

Resource Cons.	40 Hour OSHA Safety	1/17/92	8	Unspec.
ME Oil Dealers	Leak Detect. Equip.	3/20/92	2	2
JetLine, Inc.	8 Hour OSHA Refresh.	3/20/92	3	1
Safetech, Inc.	40 Hour OSHA Safety	5/1/92	8	Unspec.
Safetech, Inc.	8 Hour OSHA Refresh.	5/1/92	3	Unspec.
JetLine, Inc.	8 Hour OSHA Refresh.	6/11/92	3	Unspec.
<b>Total</b>			35	

Table 2. Continuing education opportunities accredited by the Board of Underground Storage Tank Installers FY 91/92.

In an effort to improve consistency in its enforcement decisions, the Board requested staff to draft an enforcement policy for discussion and hopefully eventual use by the Board. Although that project was initially completed in FY 91/92, amendments to DEP underground tank rules necessitated the Board revisit and revise its enforcement policy. Those efforts are underway.

## VI. Rulemaking and Program Development

Enaction of P.L. 1992 c. 817 resulted in the need to amend 06-481 CMR chapters 1, 3, and 5. Staff has drafted amendments, upon which the Board decided to go forward with rulemaking. The preliminary draft of the amendments have been forwarded to the Office of the Attorney General for preliminary review prior to initiating the rulemaking process.

## VII. Other Issues

Issues which continued this year are (1) plans for publishing a newsletter, and (2) data management. Each is discussed below.

One of the initial benefits of certification of installers was the development of an ability by the State to communicate with installers via a newsletter. State budgetary constraints and limited staff time required staff to prioritize their efforts and resulted in the newsletter being delayed for several years. However, an initial newsletter is in the final stages of development and should be published in the very near future. We hopefully plan to continue this effort on a quarterly basis, and have received considerable assistance from some DEP staff.

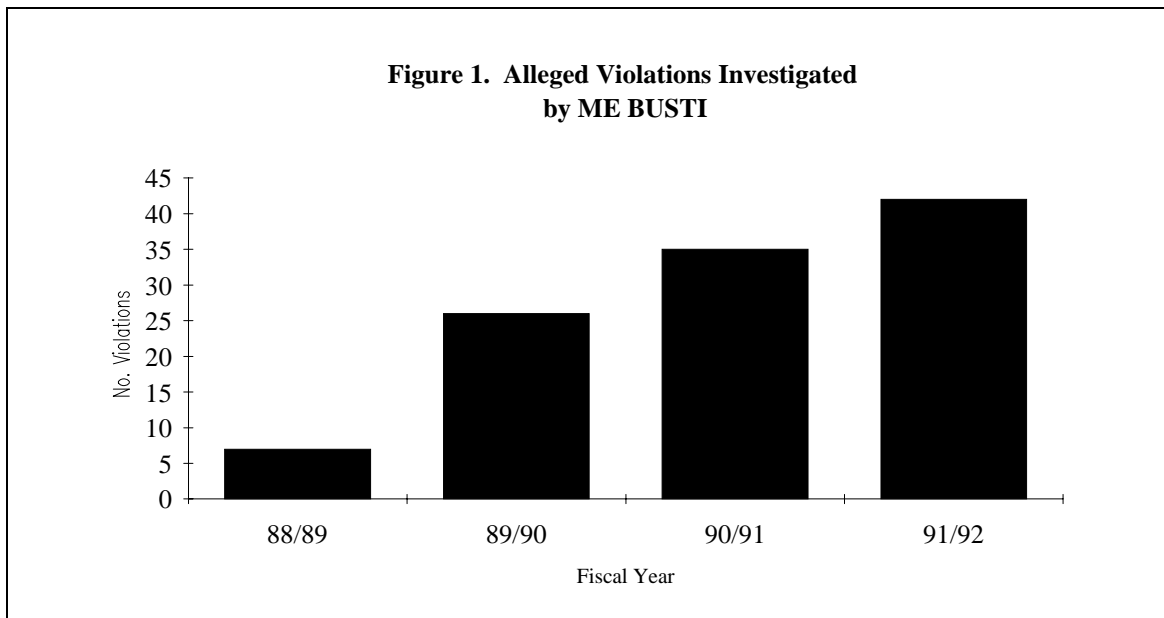
Difficulties in obtaining quality, current information have declined with efforts to automate our data needs. DEP efforts in upgrading its computer system and providing staff with hardware have significantly assisted us in this effort. Databases have been developed on EXCEL 3.0 to track basic data on installers and removers, enforcement activities, test results, continuing education programs, and continuing education attendance. Future needs and plans include a database for apprenticeship installations and associating the various independent databases identified above with each other. A continuing need exists for additional staff training in the software.

Staff has been interviewed regarding the possibility of incorporating its data needs in an upgraded version of UNO (DEP underground tank registrations) which would be designed to work in the database software entitled ORACLE. We request to have input into that decision and for the decision to be made as

soon as feasible so that we may know the direction our future data management development efforts should take.

<b>Principle Violation</b>	<b>Year</b>	<b>No.</b>	<b>Date Received</b>	<b>Date Sum.</b>	<b>Action Date</b>	<b>Board Action</b>
06-096CMR691Ap.J.11	1992	4	10/2/91	11/7/91	6/11/92	CA
06-481CMR1.4A(1)(c)	1992	4	10/2/91	11/7/91	6/11/92	CA
06-096CMR9.B.2	1992	7	11/15/91	6/2/92	6/11/92	CA
06-096CMR9.B.2	1992	7	11/15/91	6/2/92	6/11/92	CA
06-096CMR9.B.1.b	1992	7	11/15/91	6/2/92	6/11/92	CA
32MRSA10014.3	1992	15	5/29/92		6/11/92	CA
38MRSA563.1.B	1992	16	6/22/92			
38MRSA563.8	1992	16	6/22/92			
06-481CMR3.9	1992	17	6/25/92			
06-481CMR1.4(B)	1992	18	4/31/92			
06-481CMR1.4(B)	1992	19	5/5/92			
06-481CMR1.4(B)	1992	20	5/31/92			
06-481CMR1.4(B)	1992	21	4/27/92			
06-481CMR1.4(B)	1992	22	5/13/92			

Table 3. Maine Board of Underground Storage Tank Installers ongoing enforcement actions as of June 30, 1992.



## VIII. Financial Statement

The Board's financial statement for FY 91/92 is provided in Table 4. Several points should be considered when examining these data. First, income is estimated, based upon the number of people who applied for certification, took the various tests, became certified, were recertified, or were issued civil penalties. This was necessary because actual income to the Board is lumped with other underground tanks income in the Department's accounting system. An attempt was made during FY 91/92 to create budget categories in the State's accounting system to track Board income. However, due to a number of budget

crises within the State last year, DEP Administrative staff had to place a low priority on developing these budget categories. We would very much appreciate assistance in this matter as soon as possible.

<b>Income (Estimated)</b>	
Applications/Initial Written Examinations	\$3500.00
Apprenticeship Variances	\$600.00
Apprenticeship Renewals	\$4500.00
Sales of Study Packets <sup>1</sup>	\$300.00
On-Site Examination Fees	\$0.00
Final Exams/New Certifications	\$2750.00
Recertifications	\$25950.00
Late fees/recertification	\$40.00
Civil Penalties	\$5900.00
<b>Subtotal</b>	<b>\$43540.00</b>
<b>Expenses: Account 014 06A 1520 44x</b>	
Personal Services	\$55498.42
Fringe	\$18140.73
Contractual	\$624.81
Travel	\$104.70
Supplies	\$1370.28
Other	\$5323.86
Sta-Cap	\$2471.80
<b>Subtotal</b>	<b>\$83534.60</b>
<b>Grand Total</b>	<b>(\$39994.60)</b>

Table 4. Financial statement for the Board of Underground Tank Installers, July 1, 1991 through June 30, 1992.

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<sup>1</sup>Underground gasoline tank remover applicants only; all other study material costs are included into examination fees.

Second, the income shown for recertification varies widely on a biennial basis. Recertification is required every two (2) years, and this income for this year reflects the vast majority of tank installers becoming recertified this year. It is therefore expected that this figure will follow two (2) year cycles of being high and low.

Respectfully Submitted,

Elmer F. Walker,  
Chairman